

EXHIBIT O

From: [Jennings, Molly](#)
To: [Brian Dunne](#); [Andrew Williamson](#)
Cc: [WH Facebook Private Antitrust Litigation Service List](#); [Shana Scarlett](#); [Clark, Brian D.](#); [QE Facebook Antitrust](#); [fb_advertiser_counsel@scott-scott.com](#); [Yavar Bathaee](#); [Edward Grauman](#); [Andrew Wolinsky](#); [Christopher M. Burke](#); [Kristen M. Anderson](#); [Patrick McGahan](#); [Mehta, Sonal](#); [Gringer, David](#); [Holtzblatt, Ari](#); [Michael P. Srodoski](#); [Brantley Pepperman](#)
Subject: RE: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence
Date: Friday, October 1, 2021 6:30:42 PM

Brian,

As we told you in our letter, the initial production to the FTC was inadvertent. Materials can be inadvertently produced even if part of a production to a regulator. The authority we cited in our letter makes clear that is not a privilege waiver.

I take your email to mean that *In re Pacific Pictures* is the only authority you are relying on here, but please let me know if I'm mistaken.

We look forward to discussing further next week. Have a nice weekend.

Molly

From: Brian Dunne <bdunne@bathaeedunne.com>
Sent: Thursday, September 30, 2021 9:27 PM
To: Jennings, Molly <Molly.Jennings@wilmerhale.com>; Andrew Williamson <awilliamson@bathaeedunne.com>
Cc: WH Facebook Private Antitrust Litigation Service List <WHFacebookPrivateAntitrustLitigationServiceList@wilmerhale.com>; Shana Scarlett <shanas@hbsslaw.com>; Clark, Brian D. <bdclark@locklaw.com>; QE Facebook Antitrust <qefacebookantitrust@quinnemanuel.com>; fb_advertiser_counsel@scott-scott.com; Yavar Bathaee <yavar@bathaeedunne.com>; Edward Grauman <egrauman@bathaeedunne.com>; Andrew Wolinsky <awolinsky@bathaeedunne.com>; Christopher M. Burke <cburke@scott-scott.com>; Kristen M. Anderson <kanderson@scott-scott.com>; Patrick McGahan <pmcgahan@scott-scott.com>; Mehta, Sonal <Sonal.Mehta@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Holtzblatt, Ari <Ari.Holtzblatt@wilmerhale.com>; Michael P. Srodoski <msrodoski@scott-scott.com>; Brantley Pepperman <brantleypepperman@quinnemanuel.com>
Subject: Re: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence

EXTERNAL SENDER

Thank Molly. We'll check our schedules.

To help us prepare, please provide any correspondence with the FTC about this clawback, because the assertions in your letter made no sense. The materials in question were produced—voluntarily,

whether Facebook now admits it or not—years ago in a civil investigation, not a lawsuit. Facebook never clawed them back. Facebook was later sued, which is a different proceeding, and (according to your assertions) decided at that point to claim privilege. There is no such thing as springing privilege because Facebook changed its mind. Once waived through voluntary production in a civil investigation, attorney-client privilege cannot reappear.

Facebook's assertion that *In re Pacific Pictures* is inapplicable is incorrect on its face, for reasons the panel in that case itself explained when it rejected the argument that production of the there-challenged documents was not "voluntary." But of more immediate concern for me in connection with this dispute is the dearth of explanation for Facebook's other claims in its letter—principally, the details of the supposedly-dispositive correspondence between Facebook and the FTC. No matter what y'all said to the FTC in district court in 2021, it couldn't suddenly un-waive attorney-client privilege from a civil investigation in 2018 (*see In re Pacific Pictures* but also, *cf.* the entire history of privilege law...), but if Facebook really thinks that what went down in D.D.C. has any bearing at all on this dispute, please send whatever correspondence you believe to be relevant our way, and I'll review it before our meet-and-confer. What I've heard from your end thus far has not been compelling.

We disagree on the timeliness issues, but hopefully we can work this out on the merits. Your position is duly noted.

We'll revert as soon as feasible on your proposed times.

Brian

From: Jennings, Molly <Molly.Jennings@wilmerhale.com>

Sent: Thursday, September 30, 2021 5:55:32 PM

To: Andrew Williamson <awilliamson@bathaeedunne.com>

Cc: WH Facebook Private Antitrust Litigation Service List

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<shanas@hbsslaw.com>; Clark, Brian D. <bdclark@locklaw.com>; QE Facebook Antitrust

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Subject: RE: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence

Andrew,

The 502(d) order requires that the parties meet-and-confer on clawback disputes within 14 business days of the date a producing party receives notice of a clawback challenge. Dkt. 107 § 2(d). Given that Brian's letter challenging the clawbacks (which was itself untimely, for the reasons described in our letter) was received on September 10, the deadline for the parties to meet-and-confer was today.

We are nonetheless willing to meet-and-confer with you in order to determine if we can resolve this dispute short of court intervention. (If we are unable to resolve this dispute, we of course reserve the right to argue that your challenges were untimely twice over.)

We are not available during the window you proposed on Monday 10/4, but could confer on Wednesday, 10/6 between 12-1 PT or Thursday, 10/7 between 10-11 or 3-4 PT.

Finally, to ensure a productive meet-and-confer that engages on substantive law, please send along any authority (other than *In re Pacific Pictures*, which is inapplicable for the reasons explained in our letter) that supports your position.

Thanks,

Molly

From: Andrew Williamson <awilliamson@bathaeedunne.com>
Sent: Thursday, September 30, 2021 2:00 PM
To: Jennings, Molly <Molly.Jennings@wilmerhale.com>
Cc: WH Facebook Private Antitrust Litigation Service List
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<David.Gringer@wilmerhale.com>; Holtzblatt, Ari <Ari.Holtzblatt@wilmerhale.com>; Michael P.
Srodoski <msrodoski@scott-scott.com>; Brantley Pepperman
<brantleypepperman@quinnemanuel.com>; Brian Dunne <bdunne@bathaeedunne.com>
Subject: Re: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback
Correspondence

EXTERNAL SENDER

Molly,

In light of the apparent impasse on this issue, lead counsel for advertisers and consumers demand a

lead counsel conference to discuss these issues, as required by Judge DeMarchi's Standing Order for Civil Cases. We are available between 10 a.m. and Noon PT on Monday 10/4. Please let us know if that works on your end.

If so, we will circulate a conference call invite. Thank you.

Andrew Williamson

Andrew M. Williamson | Of Counsel | Bathae :: Dunne :: LLP
(301) 916-1560 (Direct)
awilliamson@bathaeedunne.com

From: "Jennings, Molly" <Molly.Jennings@wilmerhale.com>
Date: Monday, September 27, 2021 at 8:56 PM
To: Brantley Pepperman <brantleypepperman@quinnemanuel.com>, Brian Dunne <bdunne@bathaeedunne.com>
Cc: WH Facebook Private Antitrust Litigation Service List <WHFacebookPrivateAntitrustLitigationServiceList@wilmerhale.com>, Shana Scarlett <shanas@hbsslaw.com>, "Clark, Brian D." <bdclark@locklaw.com>, QE Facebook Antitrust <qefacebookantitrust@quinnemanuel.com>, "fb_advertiser_counsel@scott-scott.com" <fb_advertiser_counsel@scott-scott.com>, Yavar Bathae <yavar@bathaeedunne.com>, Edward Grauman <egrauman@bathaeedunne.com>, Andrew Wolinsky <awolinsky@bathaeedunne.com>, Andrew Williamson <awilliamson@bathaeedunne.com>, "Christopher M. Burke" <cburke@scott-scott.com>, "Kristen M. Anderson" <kanderson@scott-scott.com>, Patrick McGahan <pmcgahan@scott-scott.com>, "Mehta, Sonal" <Sonal.Mehta@wilmerhale.com>, "Gringer, David" <David.Gringer@wilmerhale.com>, "Holtzblatt, Ari" <Ari.Holtzblatt@wilmerhale.com>, "Michael P. Srodoski" <msrodoski@scott-scott.com>
Subject: RE: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence

Counsel,

Please see attached correspondence.

Thanks,

Molly

From: Brantley Pepperman <brantleypepperman@quinnemanuel.com>
Sent: Friday, September 17, 2021 3:47 PM
To: Jennings, Molly <Molly.Jennings@wilmerhale.com>; Brian Dunne

<bdunne@bathaeedunne.com>

Cc: WH Facebook Private Antitrust Litigation Service List

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EXTERNAL SENDER

Molly,

Consumer Plaintiffs join in the letter.

Thanks,

Brant

Brantley Pepperman

Associate

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From: Jennings, Molly <Molly.Jennings@wilmerhale.com>

Sent: Thursday, September 16, 2021 1:01 PM

To: Brian Dunne <bdunne@bathaeedunne.com>

Cc: WH Facebook Private Antitrust Litigation Service List

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Subject: RE: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence

[EXTERNAL EMAIL from molly.jennings@wilmerhale.com]

Brian,

We're following up on this and will get back to you. In the interim, can counsel for the User Class advise whether they are joining in this letter or if this is sent only on behalf of the Advertisers?

Thanks,

Molly

Molly Jennings | WilmerHale

+1 202 663 6947 (t)

From: Brian Dunne <bdunne@bathaeedunne.com>

Sent: Friday, September 10, 2021 7:02 PM

To: Jennings, Molly <Molly.Jennings@wilmerhale.com>

Cc: WH Facebook Private Antitrust Litigation Service List

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Subject: Klein et al v. Facebook, Case No. 5:20-cv-08570-LHK (N.D. Cal.) - Clawback Correspondence

EXTERNAL SENDER

Molly,

Please see the attached correspondence.

Best,
Brian

Brian Dunne | Partner | Bathaee :: Dunne :: LLP | bdunne@bathacedunne.com
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